**Before the**
**FEDERAL COMMUNICATIONS COMMISSION** FCC 94-202
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Eligibility for the Specialized | ) | |
| Mobile Radio Services | ) | GN Docket No. 94-90 |
| and Radio Services in the | ) | |
| 220-222 MHz Land Mobile Band | ) | |
| and Use of Radio Dispatch | ) | |
| Communications | ) | |

# NOTICE OF PROPOSED RULE MAKING

**Adopted:** August 2, 1994 **Released:** August 11, 1994

Comment Date: September 21, 1994
Reply Comment Date: October 6, 1994

By the Commission:

## Table of Contents

## I. Introduction

1. In this *Notice of Proposed Rule Making*, we propose to amend the Commission's rules governing licensee eligibility in the Specialized Mobile Radio (SMR) service and in the commercial 220-222 megahertz (MHz) land mobile services.[1] Currently, Section 90.603(c) of our rules prohibits wireline telephone common carriers that provide local exchange service from holding SMR licenses.[2] Section 90.703(c) extends this same prohibition to the licensing of commercial 220 MHz mobile radio services. In this *Notice*, we consider whether these restrictions should be eliminated as no longer relevant or necessary given the current state of the commercial mobile services marketplace.[3] We also propose to eliminate our current prohibition on the provision of dispatch service by cellular licensees and other licensees in the Public Mobile Services.[4]

## II. Background

### A. The SMR and 220 MHz Services

2. In 1974, the Commission established the SMR service as a private land mobile radio service in the 800 MHz band, envisioning that SMR systems would primarily provide radio dispatch communications to local customers on a non-interconnected basis.[5] Growth of the service spurred the Commission in 1986 to allocate additional spectrum in the 900

---

[1] 47 C.F.R. §§ 90.603(c), 90.703(c) (1993). *See* Appendix A (proposed rule changes).

[2] Section 22.2 of the Commission's rules defines wireline telephone common carriers as "common carriers . . . in the business of providing landline local exchange telephone service." 47 C.F.R. § 22.2 (1993). For purposes of this *Notice*, therefore, the terms "wireline" and "local exchange carrier" or "LEC" are interchangeable.

[3] The Commission has identified cellular, wide-area SMR, and PCS services as key components of that marketplace. *See* Second Report and Order, GN Docket No. 90-314, 8 FCC Rcd 7700 (1993) (*Broadband PCS Second Report and Order*) at para. 18, *recon.* Memorandum Opinion and Order, FCC 94-144 (Released June 13, 1994), 59 Fed. Reg. 32830 (*Broadband PCS Reconsideration Order*).

[4] 47 C.F.R. §§ 22.519(a), 22.911(d) (1993).

[5] *See* Memorandum Opinion and Order, Docket No. 18262, 51 FCC Rcd 945 (1975) at paras. 43, 67 (*SMR Allocation Reconsideration Order*), *aff'd* NARUC v. FCC, 525 F.2d 630 (D.C. Cir. 1976, *cert. denied* 425 U.S. 992 (1976) ; Second Report and Order, PR Docket No. 79-191, 90 FCC 2d 1281 (1982) at para. 12, *mod.* Memorandum Opinion and Order, 95 FCC 2d 477 (1983); D. Fertig, Private Radio Bureau, FCC, "Specialized Mobile Radio" (Mar. 1991), Appendix. While Docket 18262 did not deprive private licensees of the right to interconnect their facilities, restrictions were placed on operations in the 800 MHz band, in particular, that made interconnection arrangements difficult. *See* Further Notice of Proposed Rule Making, Docket No. 20846, 70 FCC 2d 1796, 1797 (1979).

MHz band to the service.[6] The introduction of SMR service also encouraged industry to develop new system designs and technology to maximize use of the frequencies so that operators could serve more customers.[7] Since 1974 the SMR service has experienced rapid growth.[8] In particular, SMR growth has been accompanied by a substantial amount of spectrum consolidation. In recent years, licensees have increasingly expressed an interest in aggregating large channel blocks and using advanced technologies to increase spectrum and serve wide areas efficiently.[9] SMR licensees have also developed innovative, digital applications that allow users nationwide to send both voice and data transmissions. Also, regulatory changes have enabled SMRs to offer services that are interconnected to the public switched network.[10]

---

[6] *See* Report and Order, GN Docket No. 84-1233, 2 FCC Rcd 1825, 1828-29 (1986).

[7] For example, SMR service has fueled the development of "trunking" technology. There are two types of SMR frequencies: conventional and trunked. "Trunking" is a technology where multiple channels are centrally controlled so that users are automatically assigned to operate on the first available channel. Sharing multiple channels among many users on an "as available" basis increases the efficiency of these channels more than if they were available separately to individual users. *See SMR Allocation Reconsideration Order*, 51 FCC 2d at 965, 969-970. Subscribers of conventional systems, however, must scan for available channels manually.

[8] For example, in a 1986 survey conducted by Radio Communications Report, the largest SMR provider serviced just 3,300 mobiles. In 1994, the largest SMR provider, according to the same survey, serviced 300,000 mobiles. Indeed, in 1994, at least 16 SMR companies now service more than 3,300 mobiles. *Compare* Radio Communications Report, January 15, 1986, at 5 *with* Radio Communications Report, February 14, 1994, at 14 (Survey of RCR's Top SMR Operators). SMR services are projected to reach 4.2 million customers by the year 2000. *See* Cellular Telecommunications Industry Association, *The Changing Wireless Marketplace*, at 8 (Dec. 17, 1992).

[9] *See, e.g.*, G. Naik, "Mobile Radio Companies Heed Call of Cellular Market," *The Wall Street Journal*, Sept. 13, 1993, at B4 (highlighting efforts of Nextel Communications, Inc. to consolidate SMR operations across the country and convert to digital technology in preparation for the offering of "cellular-like" service). The successful development of SMR systems, for example, prompted MCI to make a substantial investment in Nextel Communications, a major SMR provider, as a means of entering the wireless market and positioning the company to better compete with AT&T, which is seeking cellular interests. *See* E. Andrews, "MCI Plans Big Nextel Stake as Move Into Wireless," *N.Y. Times*, Mar. 1, 1994, at D1.

[10] As part of the 1982 amendments to the Communications Act, Congress allowed SMR end users to subscribe to telephone service either directly or through the SMR operator as long as for-profit resale of telephone service did not take place. The Commission subsequently removed the restrictions on SMR interconnection with the public switched telephone network if the service was obtained on a non-profit, cost-shared basis. *See* Second Report and Order, Docket No. 20846, 89 FCC 2d 741, 752-53 (1982), *recon.* Memorandum Opinion and Order, 93 FCC 2d 1111 (1983). We also permitted interconnection of telephone service at a common point at the SMR base station to reduce the cost and complexity of SMRs providing interconnected service. *Id.*

3. At present, the 800 MHz SMR service is substantially licensed in most markets.[11] The types of SMR service offerings available in the 800 MHz band range from traditional radio dispatch service for local customers to more sophisticated voice and data transmission service offered on a wide-area basis.[12] 800 MHz SMRs have traditionally been licensed on a station-by-station, channel-by-channel basis, which has been viewed as encumbering the development of wide-area, multi-channel systems in this band. The Commission in recent years, however, has made some accommodation for the licensing of wide-area SMR systems.[13] Generally, we have granted requests to operate wide-area systems only where the proposed systems are in (1) a waiting list area; (2) an area where the frequencies of the SMR stations included in the wide-area SMR system are used so extensively by the applicant that the frequencies could not be used by any other applicant to develop a viable system; or (3) any other area where no additional 800 MHz channels are available.[14] In processing these requests, we consider a single wide-area SMR system to be limited to a geographic area defined by the contiguous and overlapping service areas of stations that are (1) constructed and placed in operation; and (2) currently licensed to or managed by an applicant.[15] We have also permitted applicants for wide-area systems to aggregate their mobiles to satisfy loading requirements.[16] In addition, we have amended our technical rules and lengthened the extended implementation period to facilitate the development of wide-area systems.[17] Comprehensive regulatory treatment of wide-area SMR licensing is being considered in pending rule making proceedings.[18] In most markets, many of the 900 MHz SMR frequencies[19] are still available

---

[11] 800 MHz SMRs are licensed in the 806-824 and the 851-869 MHz bands. *See* 47 C.F.R. Part 90, Subpart S.

[12] For example, Nextel Communications has launched a sophisticated network of wide-area 800 MHz operations in Los Angeles, which ultimately will be integrated with other 800 MHz networks in California to provide telephone, private network radio dispatch, paging and messaging services throughout the state. *See* "Nextel Starts Full Commercial Service in Southern California," *PCIA Bulletin*, May 20, 1994, at 10.

[13]

[14] Letter from Ralph A. Haller, Chief, Private Radio Bureau to David Weisman, DA 92-1734, 8 FCC Rcd 143 (1993) (*Weisman Letter*); *see also* Fleet Call, Inc. 6 FCC Rcd 1533 (1991).

[15] *Weisman Letter* at 143.

[16] *Id.* at 144. In so doing, we calculate the loading for the stations that an applicant seeks to combine into a wide-area SMR system by dividing the total number of mobiles/controls associated with those stations by the total number of discrete channels licensed within the "footprint." *Id.*

[17] *See* Report and Order, PR Docket No. 93-60, 8 FCC Rcd 7293 (1993); Report and Order, PR Docket No. 92-210, 8 FCC Rcd 3975 (1993).

[18] *See* Notice of Proposed Rule Making, PR Docket No. 93-144, 8 FCC Rcd 3950 (1993) (800 MHz proceeding) and First Report and Order and Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993) (900 MHz proceeding); Further Notice of Proposed Rule Making, GN Docket No. 93-252, 9 FCC Rcd 2863 (1994) at paras. 29-34 (*CMRS Further Notice*).

for licensing, and services offered by existing licensees in this band include the provision of high-speed, digital data transmission.[20] The availability of 900 MHz channels is due to the fact that we have only engaged in limited licensing of this spectrum to date.[21]

4. In 1991, the Commission established the 220 MHz service as part of an effort to reallocate spectrum to accommodate the development of more efficient narrowband radio technologies.[22] The service is licensed in one, five and ten channel blocks on a nationwide and local basis for two-way narrowband use by both commercial and non-commercial operators.[23] Both the nationwide commercial channels and local channels in most major markets have been licensed, although few licensees have as yet completed construction and commenced service.[24]

## B. The Wireline Restrictions

5. When the Commission established the SMR service in 1974, it elected to prohibit wireline telephone common carriers from holding SMR base station licenses.[25] As this rule

---

[19] The 900 MHz SMR frequencies are located in the 896-901 and the 935-940 MHz bands. *See* 47 C.F.R. Part 90, Subpart S.

[20] For example, RAM Mobile Data has constructed a nationwide mobile data network using SMR frequencies in the 900 MHz band.

[21] We allocated 200 channel pairs in the 900 MHz band for the SMR service in 1986 and established a two-phase process for licensing these channels. Phase I licensing began in 1987 and was completed in 1992 within the 46 "Designated Filing Areas" (DFAs) that represented the top 50 markets in the country. Twenty licenses were authorized within each DFA. *See* Report and Order, GN Docket No. 84-1233, 2 FCC Rcd 1825 (1986). We sought comment on how to implement additional licensing of the service in Phase II. *See* Notice of Proposed Rule Making, PR Docket No. 89-553, 4 FCC Rcd 8673 (1989); First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993).

[22] *See* Report and Order, PR Docket No. 89-552, 6 FCC Rcd 2356 (1991) (*220 MHz Order*), *recon.* Memorandum Opinion and Order, 7 FCC Rcd 4487 (1992) (*220 MHz Reconsideration Order*).

[23] *See* 47 C.F.R. Part 90, Subpart T.

[24] The debut of 220 MHz service has been delayed by litigation, which was recently resolved. *See* "220 MHz Debut Nearing Despite Legal Wrangling," Radio Communications Report, Feb. 28, 1994, at 1. The D.C. Circuit recently dismissed a case which challenged our licensing procedures for the 220 MHz service. *See* Order, *per curiam*, Evans v. FCC, Case No. 92-1317 (D.C. Cir. Mar. 18, 1994). While the suit was pending, we had conditioned all local license grants and extended the construction deadlines until the matter was resolved. *See* Public Notice, Lottery for 220-222 MHz Private Radio Land Mobile "Local" Channels, DA-1231, 57 Fed. Reg. 41935, 41936 (Sept. 14, 1992). The construction deadlines were further extended in an Order dated March 30, 1994. *See* Order, PR Docket No. 89-552, DA 94-276 (Mar. 30, 1994). Local 220 MHz licensees have until Dec. 2, 1994 to construct their facilities and place them in operation.

[25] *See* Second Report and Order, Docket No. 18262, 46 FCC 2d 752, 787 (1974) (*SMR Allocation Second Report and Order)* (codified at 47 C.F.R. § 90.603(c) (1993)).

has been interpreted, a wireline telephone common carrier may not be in control of an SMR licensee, whether such control is *de jure* (ownership of 50 percent or more of the company's stock) or *de facto* (control in fact regardless of amount of stock owned).[26] Because of the dominance of the established wireline carriers in the 1970's, the Commission viewed the prohibition on wireline entry as consistent with promoting competition in the fledgling SMR industry.[27] The Commission has also stated that the wireline prohibition was intended to ensure that SMRs would be available as a business opportunity for small entrepreneurs and to reduce incentives for wireline carriers to engage in discriminatory interconnection practices.[28]

6. In conjunction with the establishment of 220 MHz service, the Commission adopted a prohibition on wireline eligibility for commercial licenses identical to the SMR wireline prohibition.[29] Although the Commission did not explain in detail its reasons for applying the wireline ban to commercial 220 MHz licenses, the Commission has stated that the rationale for excluding wirelines from SMR licensing also served as the basis for the 220 MHz limitation.[30]

7. In 1986, the Commission issued a *Notice of Proposed Rule Making* in PR Docket No. 86-3 that proposed to eliminate the SMR wireline restriction.[31] The Commission initiated this docket after receiving several requests from wireline carriers for waiver of Section 90.603(c). The Commission subsequently granted conditional waivers of the restriction to

---

[26] *See* Letter from Ralph A. Haller, Chief, Private Radio Bureau, to Henry Goldberg (July 1, 1991). *See also* In re McCaw Cellular Communications Inc., 4 FCC Rcd 3784, 3788-89 (1989) (discussing indicia of control). Non-wireline common carriers are not restricted from being licensed as SMR service providers.

[27] *See SMR Allocation Second Report and Order*, 46 FCC 2d at 760, 767-69 (noting "a general feeling of malaise about letting wireline monopolies expand in the mobile communications market which has been traditionally served primarily by competitive entities"). In addition, one of the two cellular blocks in each market was allocated specifically for use by the local wireline carrier. *Id.* at 761.

[28] *See* Order, PR Docket No. 86-3, 7 FCC Rcd 4398 (1992) (*Termination Order*).

[29] *See 220 MHz Order*, 6 FCC Rcd 2356 (1991), *recon. 220 MHz Reconsideration Order*, 7 FCC Rcd 4487 (1992). *See also* 47 C.F.R. § 90.703(c), which mirrors the language of the SMR wireline restriction. Also of note, in a recent proceeding examining proposals to promote more efficient use of frequency bands allocated to the private land mobile radio services, the Commission similarly proposed restricting wireline eligibility for SMR licenses in the 220-222 MHz, 806-821/851-866 and 896-901/935-940 MHz bands and for the licensing of a potential new service -- Innovative Shared Use Radio Operations. We indicated, however, that we would specifically address the application of wireline eligibility to Innovative Shared Use licensees in a future proceeding covering wireline eligibility in all bands. *See* Notice of Proposed Rule Making, PR Docket No. 92-235, 7 FCC Rcd 8105, 8121, 8159 and 8162 (1992).

[30] *See 220 MHz Reconsideration Order*, 7 FCC Rcd at 4487 ("[T]he genesis of our regulatory scheme for private carriers at 220-222 MHz was inspired by the treatment of Specialized Mobile Radio Service licensees under Subpart S.").

[31] *See* Notice of Proposed Rule Making in PR Docket No. 86-3, FCC 86-2, 51 Fed. Reg. 2910 (1986).

several wireline companies to allow them to acquire SMR stations as part of larger corporate acquisitions.[32]

8. In 1992, the Commission terminated Docket No. 86-3 on the grounds that the record had become stale and stated that the wireline restriction should be retained at least until the Commission could more fully evaluate "the competitive potential of private land mobile services vis-a-vis common carrier land mobile providers" so as "to preserve a climate favorable to the continued development of private land mobile competitors."[33] Additionally, the *Termination Order* terminated all conditional waivers of Section 90.603(c) that had been previously granted, but gave recipients of these waiver grants an opportunity to rejustify their waiver grants.[34]

9. Southwestern Bell Corporation (SBC) and Bell Atlantic Enterprises International, Inc. (Bell Atlantic) sought reconsideration of the Commission's decision to terminate Docket No. 86-3.[35] The American Mobile Telecommunications Association (AMTA) filed an opposition to these petitions.[36] In addition, SBC, Bell Atlantic and US West Paging, Inc. (USWP) filed requests to rejustify the waiver grants that had been terminated pursuant to the

---

[32] The Commission granted waivers to Pacific Telesis, Inc., Southwestern Bell, Advanced Paging Services, Inc., U.S. West Paging, Inc., and Bell Atlantic Enterprises International, Inc.. *See Termination Order*, 7 FCC Rcd at 4399.

[33] *Id.* The Commission used similar reasoning to justify retaining the commercial 220 wireline restriction in 1992. In the *220 MHz Reconsideration Order*, the Commission observed that private carrier land mobile providers were emerging as innovative and viable competitors to common carrier land mobile services. The Commission decided that retaining the wireline ban on commercial 220 licenses would encourage competition until the Commission could "better evaluate the extent to which private land mobile services might prove to be true competitors to cellular and similar technologies." *220 MHz Reconsideration Order*, 7 FCC Rcd at 4488.

[34] *Termination Order*, 7 FCC Rcd at 4399. The *Order* indicated that all conditional waivers would automatically terminate within 90 days of its effective date, unless within 60 days of the effective date recipients of these waivers filed a request demonstrating that continuation of the waiver was in the public interest. We also denied a subsequent request to stay our waiver termination. *See* Order, PR Docket No. 86-3, 7 FCC Rcd 6879 (1992).

[35] *See* Bell Atlantic Enterprises International, Inc. Petition for Reconsideration of PR Docket No. 86-3 (filed Aug. 21, 1992); Southwestern Bell Corporation Petition for Reconsideration of PR Docket No. 86-3 (filed Aug. 21, 1992). BellSouth Corporation (BellSouth) filed comments in response to the Petitions for Reconsideration. *See* Comments of BellSouth On Petitions for Reconsideration (filed Oct. 15, 1992). Southwestern Bell withdrew its Petition on August 3, 1994. Southwestern Bell Notice of Withdrawal of Petition for Reconsideration (filed Aug. 3, 1994). Also, we note that BellSouth has filed a petition for review of the Commission's *Termination Order* in the United States Court of Appeals for the District of Columbia Circuit. *See* Petition for Review, BellSouth Corporation v. FCC, No. 92-1334 (D.C. Cir. Aug. 3, 1992).

[36] AMTA Opposition to Petition for Reconsideration, PR Docket No. 86-3 (filed September 3, 1992). Telephone and Data Systems, Inc. (TDS) filed reply comments in response to AMTA's Opposition. *See* Reply Comments of TDS, Inc., PR Docket No. 86-3 (filed October 26, 1992).

*Termination Order*.[37] In 1993, we received three additional requests to waive the wireline rule filed by RAM Mobile Data USA Limited (RMD), Cass Cable TV, Inc. (Cass Cable), and American Paging, Inc. (API).[38]

10. On April 12, 1994, we asked for comment on each of the pending requests for waiver of the wireline prohibition.[39] Nineteen entities submitted comments on the waiver requests and five have submitted reply comments. Most commenters support the petitioners' requests for waiver.[40] Many commenters also contend that the wireline prohibition is no longer justified in today's mobile services marketplace and therefore urge the Commission to initiate a new rule making to review the wireline prohibition.[41] Three of the commenters expressed concern about lifting the wireline prohibition, but agreed that the issue should be resolved in a rule making proceeding.[42]

11. The Commission also has before it a petition for rule making filed by Polar Communications Mutual Aid Corporation (Polar).[43] Polar argues that wireline participation in the SMR industry would serve the public interest and that the original reasons for establishment of the restriction are either moot or are being addressed by ongoing Commission efforts to revise mobile services regulation. We hereby incorporate Polar's rule making request into this proceeding.

---

[37] *See* SBC Request for Permanent Waiver, PR Docket No. 86-3 (filed Sept. 18, 1992); Bell Atlantic Request for Rule Waiver (filed Oct. 14, 1992); USWP Request for Permanent Waiver, PR Docket No. 86-3 (filed Oct. 20, 1992). PacTel Paging and PacTel Paging of California requested a temporary extension of Section 90.603(c), which was granted in order to facilitate divestiture of facilities. *See* PacTel Request for Temporary Waiver (filed Oct. 19, 1992).

[38] *See* RMD Request for Transfer of Control and Rule Waiver (filed Sept. 22, 1993); Cass Cable Request for Rule Waiver (filed Nov. 8, 1993); API Request for Rule Waiver (filed Nov. 24, 1993).

[39] FCC Public Notice No. DA 94-329 (Apr. 12, 1994).

[40] *See, e.g.,* Dial Page, Inc. Comments (filed May 20, 1994) at 3, National Telephone Cooperative Association Comments (filed May 20, 1994) at 2, American Mobile Telecommunications Association, Inc. Comments (filed May 20, 1994) at 1 (supporting the requests, but conditioning Cass Cable and API requests on outcome of rulemaking), Poka-Lambro Telephone Cooperative, Inc. Comments (filed May 20, 1994) at 2 (supporting the requests, but conditioning RAM and API requests on outcome of rulemaking).

[41] *See, e.g.,* Chariton Valley Telephone Corporation Comments (filed May 20, 1994) at 5-6, National Telephone Cooperative Association Comments (filed May 20, 1994) at 2-3, Joint Comments of Pacific Bell and Nevada Bell (filed May 20, 1994) at 2-3.

[42] Comments of Audio-Video Corporation 1-2 (filed May 23, 1994); Comments of Cellular Information Systems, Inc. 6-9 (filed May 20, 1994); Joint Comments of the Industrial Telecommunications Association, Inc. and Council of Independent Communication Suppliers (filed May 20, 1994).

[43] Polar Communications Mutual Aid Corporation Petition for Rule Making (filed Nov. 23, 1993).

## C. Dispatch Prohibition

12. The Commission currently prohibits common carriers licensed after January 1, 1982, including all cellular licensees, from offering dispatch services.[44] The Commission's dispatch prohibition is derived from a statutory ban adopted as part of the 1982 amendments to the Communications Act, which prohibited common carrier dispatch radio service while also providing that dispatch could be offered without restriction in the private land mobile services.[45] According to the 1982 Conference Report accompanying this legislation, Congress did not want land mobile frequencies allocated for use by common carriers to be devoted to dispatch service to any significant extent.[46] The Commission has since construed the prohibition on dispatch services to include any transmission on cellular frequencies that routes communications through a dispatcher, as opposed to through a cellular switch (i.e., with no intervention by a dispatcher).[47] On the other hand, the Commission has allowed "dispatch-type" communications to be offered through the cellular switched network as long as the communication is not directly between a dispatcher and end users.[48] Presently, in the private land mobile services, most dispatch is provided on an internal, private basis, although dispatch is also available on commercial and shared-use systems.

## D. Recent Legislative and Regulatory Developments

13. In the 1993 Omnibus Budget Reconciliation Act (Budget Act), Congress amended the Communications Act to create a new comprehensive framework for the regulation of all mobile radio services.[49] One of the consequences of this legislation is that the traditional distinction between private and common carrier services that constituted one of the underpinnings of the wireline prohibition has been significantly altered. Section 332 of the Communications Act, as amended by the Budget Act, divides all mobile services into two

---

[44] 47 C.F.R. § § 22.519(a), 22.911(d) (1993).

[45] *See* 47 U.S.C. § 332 (c)(2) (1982). *See also* H.R. Rep. No. 765, 97th Cong., 2d Sess. 55-56 (1982). A Commission prohibition against cellular carriers engaging in fleet dispatch services predated the 1982 statutory ban on dispatch services. *See SMR Allocation Second Report and Order*, 46 FCC 2d at 761.

[46] Some common carrier dispatch is available because Congress provided that licensees offering dispatch prior to January 1, 1982 could continue to do so under the statute. Accordingly, our rules provide for this limited amount of common carrier dispatch. *See, e.g.,* 47 C.F.R. § 22.519(a) (1993).

[47] *See* Report and Order, GN Docket No. 87-390, 3 FCC Rcd 7033, 7042-43 (1988), *recon.* Memorandum Opinion and Order, 5 FCC Rcd 1138 (1990).

[48] *Id.* We define dispatch service under our rules as "[t]wo-way voice communications, normally of not more than one minute in duration that is transmitted between a dispatcher and one or more land mobile stations, directly through a base station, without passing through the mobile telephone switching facilities." 47 C.F.R. § 22.2 (1993).

[49] *See* Pub. L. No. 103-66, Title VI, 6002(b)(2)(A), (B), 107 Stat. 312, 392 (1993).

categories, commercial mobile radio service (CMRS) and private mobile radio service (PMRS). In our *CMRS Second Report and Order*, we concluded that under Section 332, certain private mobile radio service providers, including SMR and commercial 220 MHz licensees, would be subject to reclassification as CMRS if they provide "interconnected service."[50] The statute further provides that as CMRS providers, these licensees are to be regulated as common carriers, although the Commission has authority to forbear from enforcing certain provisions of Title II of the Communications Act with respect to CMRS.[51]

14. Also in the Budget Act, Congress has amended the ban on common carrier dispatch service in former Section 332 of the Communications Act. Although Congress left the ban in place, it granted the Commission authority to repeal the ban in whole or in part.[52] In GN Docket No. 93-252, we sought comment on a proposal to eliminate the prohibition, but concluded that the record "has not provided us with sufficient data to sustain an informed judgment regarding the effects that removal of the dispatch service ban may have in the dispatch marketplace."[53] In particular, we noted that while most commenters favored eliminating the dispatch prohibition, some commenters argued that repeal of the ban would enable Part 22 licensees with more spectrum and greater resources than traditional SMR licensees to exercise market power over SMR providers primarily offering dispatch.[54] Accordingly, we stated that we would seek further comment on the issue.[55]

## III. Discussion

15. The mobile services marketplace has changed dramatically in the twenty years since the SMR/wireline prohibition was adopted, and the pace of change is now accelerating. We believe that our eligibility requirements for SMR and commercial 220 MHz services should accurately reflect the current state of competition in the mobile services arena. Given the dynamic changes occurring in the marketplace, we tentatively conclude that our wireline restrictions no longer serve a useful purpose and therefore should be eliminated. Also, in light of recent competitive and regulatory developments, we tentatively conclude that the present prohibition against common carrier dispatch service should be modified or eliminated. We seek comment on these proposals, and particularly request commenters to address the

---

[50] Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 at paras. 90, 95 (1994) (*CMRS Second Report and Order*).

[51] 47 U.S.C. § 332(c)(1)(A); H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 491 (1993).

[52] *Compare* former 47 U.S.C. § 332(c)(2) (1982) *with* 47 U.S.C. § 332(c)(2) (1993).

[53] *See CMRS Second Report and Order*, 9 FCC Rcd 1411 at para. 105.

[54] *Id.* at para. 104 and nn. 212-13.

[55] *See id.* at para. 105.

prospective impact of these proposed changes on mobile services competition.

### A. Licensee Eligibility in SMR and 220 MHz Commercial Service

16. In evaluating our present wireline restrictions, we tentatively conclude that there is no longer a need for the SMR wireline ban or the commercial 220 MHz wireline restriction in today's competitive mobile service marketplace.[56] We reach this tentative conclusion for several reasons. First, we believe that the risk of wireline carriers being able to cause competitive harm if allowed to enter the SMR market has diminished in recent years. When the SMR wireline ban was adopted 20 years ago, mobile services were in their infancy and telecommunications was dominated by wireline carriers under the control of AT&T. Since that time, the breakup of AT&T and the rapid growth of mobile services have combined to create an environment in which wireline carrier participation in mobile services, including participation by the post-divestiture Bell Operating Companies (BOCs), has the potential to increase competition rather than impede it.

17. We have recently recognized the evolving role of wireline carriers in the mobile services arena in our Broadband PCS docket, in which we concluded that wireline entities should be allowed to hold broadband PCS licenses without restriction (except to the extent such entities also hold attributable cellular interests). In that proceeding, we concluded that allowing local exchange carriers (LECs) to participate in broadband PCS would produce significant economies of scope between wireline and PCS networks, which, in turn, would promote rapid development of PCS and yield a broader array of PCS services at lower costs to consumers.[57] We have similarly concluded that LECs should be allowed to participate in the provision of narrowband PCS service without restriction.[58] We believe that our conclusions with respect to wireline entry into broadband and narrowband PCS are also potentially applicable to SMR and 220 MHz commercial service.

18. In addition to perceiving potential benefits from allowing wireline entry into SMR and 220 MHz service, we question whether the wireline restriction continues to be necessary to protect against competitive harm. The wireline restrictions have served to eliminate any incentive for LECs to (1) discriminate in the offering of interconnection to non-affiliated SMR licensees, or (2) use their market power in the local exchange market to cross-subsidize SMR services, thereby undercutting potential competition. Even if the wireline prohibition is eliminated, however, other regulatory safeguards exist and can be enforced to prevent wireline

---

[56] *See* discussion *supra* at para. 5 (discussing bases for wireline restrictions).

[57] *See Broadband PCS Second Report and Order* at para. 126, *recon. Broadband PCS Reconsideration Order*. The Commission also opted to refrain from imposing any new separate subsidiary requirements on LECs -- including BOCs -- seeking to participate in the PCS market. *See* discussion *infra* at para. 28.

[58] First Report and Order, GN Docket No. 90-314, 8 FCC Rcd 7162, 7167 (1993) (*Narrowband PCS First Report and Order*), *recon.* Memorandum Opinion and Order, 9 FCC Rcd 1309 (1994).

carriers from engaging in these forms of anti-competitive behavior.

19. With respect to discrimination in interconnection, Section 201 of the Communications Act mandates that a carrier must provide reasonable interconnection to any carrier that requests it. In addition, Section 332(c)(1)(B) of the Communications Act, as amended by the Budget Act, requires the Commission pursuant to Section 201 to order common carriers to interconnect with CMRS providers (which includes any SMR or commercial 220 MHz licensee utilizing interconnection) on reasonable request.[59] In our Order implementing this provision, we determined that LECs should provide reasonable interconnection to all CMRS providers in a manner that is consistent with our past requirements for cellular providers.[60] In addition, we have reaffirmed our authority under Sections 201 and 202 of the Communications Act to require LECs to offer interconnection to PMRS providers.[61] We believe that these safeguards should be sufficient to protect against unreasonable discrimination by LECs in the event that we allow wireline entry into the SMR market.

20. We also note that independent accounting safeguards exist to protect against cross-subsidization in the event of wireline entry into the SMR service. In the CMRS docket, we indicated that our joint cost and affiliate transactions rules would apply to all CMRS providers with LEC affiliates.[62] These rules require LECs[63] to maintain procedures to separate the costs of the regulated activities from those of their activities that are classified as

---

[59] *See* Communications Act, 47 U.S.C. § 332(c)(1)(B).

[60] *See CMRS Second Report and Order*, 9 FCC Rcd 1411 at paras. 227-39. Past FCC policies have established that telephone companies must offer unaffiliated cellular operators, at a minimum, a form of interconnection no less favorable than that furnished to their own cellular affiliate, or satisfy any other form of reasonable interconnection arrangement requested by a unaffiliated cellular service provider. Telephone companies must also engage in good faith negotiations of interconnection agreements with cellular carriers. *See* Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Declaratory Ruling), 2 FCC Rcd 2910, 2912-13 (1987), *recon.* Memorandum Opinion and Order, 4 FCC Rcd 2369 (1989).

[61] *See CMRS Second Report and Order*, 9 FCC Rcd 1411 at para. 239. *See also* Amendment of Part 20, 59 Fed. Reg. 18493 (1994) (to be codified at 47 C.F.R. § 20.11). With respect to private mobile service licensees, it is generally well settled that the Commission has authority to require common carriers to provide interconnection to private entities as part of its jurisdiction to regulate interstate common carrier service. *See, e.g.*, Pub. Util. Comm'n of Texas v. FCC, 886 F.2d 1325, 1327-35 (D.C. Cir. 1989)(upholding FCC preemption of state regulation of intrastate interconnection of private microwave licensee and noting assumption that "creation of an interconnection right for wholly *inter*state carriage is securely within the FCC's authority")(emphasis in original); Fort Mill Tel. Co. v. FCC, 719 F.2d 89, 92 (4th Cir. 1983) (recognizing "right of a customer to interconnect his equipment with the interstate telephone network").

[62] *See CMRS Second Report and Order*, 9 FCC Rcd 1411, at para 218. *See also* Part 32 and Part 64 of the Commission's Rules, 47 C.F.R. Parts 32, 64.

[63] These rules do not apply to carriers that employ average schedules in lieu of determining their costs. 47 C.F.R. § 64.902 (1993).

nonregulated for federal accounting purposes,[64] and to account for their transactions with their nonregulated affiliates in accordance with specified valuation methodologies.[65] Since most SMRs and commercial 220 MHz licensees fall inside the CMRS definition (and are not rate-regulated), these existing and applicable accounting rules should help prevent cross-subsidization .

21. Another reason for eliminating the wireline prohibition, in our view, is that the SMR industry is sufficiently well-established that wireline entry is unlikely to chill further development of the service.[66] Although SMR operations today are still relatively small in comparison to cellular operations, most available SMR spectrum has been licensed in metropolitan areas.[67] Thus, any threat that wirelines might obtain a substantial portion of SMR spectrum and thereby hinder the development of SMR service by non-wireline carriers is substantially diminished. As a practical matter, wirelines are likely to be largely limited to entering the SMR business by acquiring existing SMR businesses, and all such transfers would be subject to Commission review under our existing transfer of control and assignment of license rules.

22. We reach a similar tentative conclusion with respect to wireline participation in commercial 220 MHz service. Although 220 MHz service was established more recently than SMR, substantial licensing has occurred and we have closed the service to new applicants for the time being. Thus, wireline entry into commercial 220 MHz service would be likely to be gradual as the service develops, and would be subject to case-by-case review by the Commission. In addition, a more open eligibility policy may be suitable because of the narrowband nature of 220 MHz service. In establishing regulations for the licensing of narrowband PCS, for example, the Commission concluded that LECs should be allowed to participate in the provision of narrowband PCS service without restriction.[68] The Commission reasoned that narrowband PCS was sufficiently disparate from any LEC offering to make negligible any ability these carriers might have to exert undue market power or

---

[64] *See* 47 C.F.R. § 64.901 (1993). Section 32.23 of our Rules, 47 C.F.R. § 32.23, defines the circumstances under which LEC activities are classified as nonregulated for federal accounting purposes. This nonregulated category includes activities, such as SMR services, that have never been subject to rate regulation.

[65] *See* 47 C.F.R. §§ 32.27, 64.902 (1993).

[66] *See* discussion *supra* at paras. 2-3 and note 8.

[67] *See, e.g.,* S. Malgieri, "SMRs Becoming Hot Investment in 1990's Wireless Technology," Radio Communications Report, Sept. 13, 1993 at 21.

[68] *Narrowband PCS First Report and Order*, 8 FCC Rcd at 7167; *recon.* Memorandum Opinion and Order, 9 FCC Rcd 1309 (1994).

restrain trade.[69] We seek comment on whether a similar conclusion is justified in the case of 220 MHz service.

23. Additionally, we observe that repeal of the wireline ban could promote opportunities for additional entry of small entrepreneurs. Polar suggests that the overwhelming majority of companies shut out of the SMR business by the wireline ban are small, rural telephone companies with capitalizations that are small in comparison to many dominant SMR operators.[70] Repeal of the ban could therefore serve to further competition in the SMR market by increasing the number of small business participants in the service. We also observe that future auctions of SMR spectrum could provide additional opportunities for small business entry into SMRs through competitive bidding incentives established for small businesses, minorities and rural telephone companies.[71]

24. In addition, wireline entry could infuse new capital and expertise into the mobile services marketplace. The SMR industry is in transition, evolving from stand-alone analog to wide-area networks. 220 MHz service is also in at an important stage of technological development. During this time frame, wirelines can be a key source of capital and expertise for the development of new technological advances that will benefit these services.[72]

25. In sum, we believe our wireline restrictions have been outmoded by changes in the mobile services marketplace since 1974. We are therefore satisfied that there may be cause to eliminate these restrictions. Commenters are nevertheless invited to explore the issues raised by our discussion above and to present any views that justify retaining our wireline restrictions. In particular, we are interested in any concerns commenters may have about the potential ability of wirelines to unfairly influence competition in the mobile services marketplace. In addition, while we believe that repeal of the wireline restrictions is equally justified for both SMR and commercial 220 MHz services, commenters may wish to address the alternative of retaining the restrictions for one service and not the other. Moreover, while our discussion has identified ways in which small entrepreneurs could benefit from lifting the

---

[69] *See id.* at para. 31. The Commission reached the same conclusion with respect to cellular entry into narrowband PCS, citing the difference between cellular and narrowband PCS service offerings. We defer the question of cellular entry into 220 MHz service, however, pending resolution of the CMRS "spectrum cap" issue in GN Docket No. 93-252. *See* para. *29, infra.*

[70] *See* Polar Communications Mutual Aid Corporation, Petition for Rule Making (filed Nov. 23, 1993) at 6.

[71] *See* Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994), at paras. 267-282.

[72] For example, RAM Mobile Data (RMD) presently operates an innovative wireless data network that relies on the limited participation of wireline carrier BellSouth Enterprises, Inc. (BSE) in the venture. The alliance between RMD and BSE does not violate the wireline prohibition because BSE has only a minority non-controlling interest in the RMD enterprise.

restriction, we also ask for comment on whether wireline entry could hasten the trend toward the acquisition of SMRs by larger entities.

26. In proposing to allow wirelines to enter the SMR and commercial 220 MHz markets, we emphasize our intent to vigorously enforce statutory and regulatory safeguards discussed above that prohibit wirelines from engaging in discriminatory interconnection practices.[73] We encourage commenters to address how we can best achieve this objective.

27. Also, assuming we allow wireline entry into SMR and 220 MHz services, we seek comment on whether existing accounting safeguards applicable to LECs with CMRS operations are sufficient to protect against cross-subsidization and discriminatory pricing, or whether we should also impose structural separation requirements on wireline carriers seeking to offer SMR or commercial 220 MHz services.[74] Our existing accounting safeguards are designed to ensure that wireline ratepayers do not bear the costs of LEC ventures into businesses that are not subject to rate regulation. . We therefore have rules in place that classify non-rate regulated services as nonregulated activities for federal accounting purposes, and that govern how LECs apportion their costs between regulated and nonregulated activities.[75] . We also have accounting rules that govern how LECs account for their transactions with their nonregulated affiliates.[76] We observe that in the *Broadband PCS Second Report and Order*, we confirmed that these accounting safeguards would apply to PCS, but concluded that no new separate subsidiary requirements should be imposed on LECs (including BOCs) that provide PCS service. We determined that added structural separations requirements would seriously undermine the ability of LECs to take advantage of their potential economies of scope and would jeopardize other public interest benefits of wireline participation in PCS.[77] We therefore seek comment on whether added structural separation requirements would similarly undermine the potential public interest benefits of

---

[73] *See* Communications Act, 47 U.S.C. §§ 201, 202, 332. We also note that we are unaware of any pending complaints alleging discriminatory interconnection filed by unaffiliated cellular entities against wireline carriers with cellular affiliates.

[74] We note that structural separation requirements are imposed on certain dominant telephone carriers (*i.e.*, BOCs) that provide cellular service. 47 C.F.R. § 22.901(b) (1993).

[75] *See* 47 C.F.R. §§ 32.23, 64.901 (1993).

[76] *See* 47 C.F.R. §§ 32.27, 64.902 (1993). We note that we recently proposed to strengthen our affiliate transactions rules for telephone companies. Notice of Proposed Rule Making, CC Docket No. 93-251, 8 FCC Rcd 8071 (1993). Any rule amendments we adopt in that docket would, of course, apply to transactions between LECs and their SMR affiliates.

[77] *Broadband PCS Second Report and Order*, 8 FCC Rcd 7700 at para. 126. We recently declined to impose added structural safeguards for landline telephone carriers with CMRS affiliates when the issue was presented to us in Gen. Docket No. 93-252. We did commit, however, to exploring the subject in a separate proceeding. *See CMRS Second Report and Order*, 9 FCC Rcd 1411 at paras. 218-19; *see also* Report and Order, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991), *recon. pending, review pending* (*Computer III Remand Proceeding*); Memorandum Opinion and Order, CC Docket No. 90-623, 9 FCC Rcd 3195 (1994).

wireline entry into the SMR and commercial 220 MHz markets.

28. Finally, assuming that we eliminate the wireline restriction, the issue arises whether there is a need to impose other eligibility restrictions on SMR and commercial 220 MHz applicants to address present day competitive concerns. In particular, we have recognized in other contexts that we cannot yet determine that cellular licensees lack market power in the mobile services market.[78] At this time, we will defer consideration of whether this market power is sufficient to justify restrictions on cellular eligibility for SMR or 220 MHz licensing pending a decision in General Docket 93-252 on our proposal to impose a general limit on the amount of spectrum that any CMRS licensee may acquire in a given geographic market.[79]

## B. Common Carrier Dispatch Prohibition

29. Congress has given the Commission the discretion to terminate the prohibition on common carrier dispatch service in whole or in part.[80] In light of this authority and our desire to maintain robust competition in all sectors of the mobile service marketplace, we believe there is a need to reevaluate this prohibition in the context of the new regulatory framework created by the amendments to Sections 332 and 3(n) of the Communications Act. Also, while we have solicited comment on this issue once before recently, we believe we need additional and more specific information than was previously offered to make our decision.[81]

30. We propose to amend our rules to permit all mobile service common carriers to provide dispatch service. A number of parties have indicated to us in the past that repeal of the dispatch ban would enhance competition in the dispatch market and thereby provide consumers with expanded choice and lower prices. We tentatively agree with these views and therefore are inclined to repeal the present prohibition entirely. We ask commenters to address our tentative conclusion that repeal of the dispatch ban will lead to more innovative service offerings and lower costs for dispatch customers. We also seek comment on whether repeal of the ban will increase opportunities for dispatch customers to obtain service from

---

[78] In the *Broadband PCS Order* and again in our recent *Broadband PCS Reconsideration Order*, we determined that cellular operators, unlike other mobile services providers, may have the incentive and the potential to exercise market power to subvert PCS competition within their service areas. To ensure a competitive PCS market, therefore, we concluded that some constraints on cellular ownership of PCS systems were necessary within each cellular licensee's service area. *Broadband PCS Second Report and Order*, *supra*, at paras. 104-108, *recon. Broadband PCS Reconsideration Order* at para. 79.

[79] *CMRS Further Notice*, 9 FCC Rcd [] (1994) at paras. 86-105. In that proceeding, the Commission is also deciding the technical, operational and licensing rules that should apply to CMRS licensees. *Id.* at paras. 5-85, 106-155.

[80] *Compare* 47 U.S.C. § 332(c)(2)(1982) *with* 47 U.S.C. § 332(c)(2) (1993).

[81] *See CMRS Second Report and Order*, 9 FCC Rcd 1411 at para. 105.

commercial vendors as an alternative to relying on internal systems or systems shared with other eligible users. Commenters are also asked to consider whether repeal of the dispatch prohibition will have differing competitive implications in rural areas, where common carrier mobile operators are more likely to have substantial capacity available for dispatch.

31. While we regard the dispatch prohibition as outdated in the current regulatory and competitive environment, we are aware of SMR industry concerns regarding the role that CMRS providers with greater amounts of spectrum than traditional SMR licensees might play in the dispatch market. We encourage commenters to provide data on the current state of competition in the dispatch market, including the level of participation by small businesses. We also ask commenters to address the potential for participation in the dispatch market by mobile service common carriers. For example, we seek comment on the types of dispatch services that common carrier licensees are most likely to offer, and whether there are any technical advantages or disadvantages to offering dispatch service on a common carrier mobile service system. Next, we request comment on the effect of common carrier entry on competition in the dispatch market, including, in particular, the effect of cellular providers entering the dispatch market. Commenters should further consider whether common carriers operating in the dispatch market could engage in discriminatory pricing or cross-subsidization activities that would place dispatch competitors at a disadvantage.

32. If we conclude that immediate lifting of the dispatch prohibition could have an anti-competitive impact, one alternative would be to "sunset" the rule at some point in the future. For example, we could delay repeal of the rule until August 10, 1996, three years from the date the Budget Act amendments became law. This effective date would coincide with the conclusion of the three year transition period provided in the Budget Act for existing private land mobile licensees to adjust to regulation as CMRS providers.[82] A sunset provision would also effectively defer common carrier mobile service (*e.g.*, cellular service) participation in the dispatch market and thereby give the Commission more time to evaluate information concerning the state of competition in the dispatch market. We seek comment on this alternative.

33. Another alternative to outright repeal of the ban on common carrier dispatch service would be to allow mobile common carrier licensees to provide dispatch service only on a secondary basis or to impose a limit on the amount of system capacity that common carrier licensees may devote to dispatch service.[83] Consumers appear to identify cellular as

---

[82] Pub. L. No. 103-66, Title VI, § 6002(c)(2)(B) (1993); *see CMRS Second Report and Order*, 9 FCC Rcd 1411, at para. 278.

[83] Under our existing rules, cellular providers can offer non-common carrier services on a "secondary basis," which means they can only offer such services if the non-common carrier service will not interfere with the operator's ability to offer cellular service. Thus, a cellular operator can only offer non-common carrier service if there is available capacity on its system. *See* Report and Order, GN Docket No. 87-390, 3 FCC Rcd 7033 (Released Dec. 12, 1988).

primarily a two-way voice service, therefore cellular providers may in any case be reluctant to divert system capacity from voice to dispatch service. On the other hand, if dispatch evolves from a primarily analog service to a primarily digital service, cellular licensees may have ample capacity to provide both radiotelephone and dispatch. Also, the introduction of broadband PCS could provide competitive incentives for cellular operators to preserve primary voice service without the need for restrictions. In light of these factors, we seek comment on whether imposing limits on cellular dispatch is necessary or practical.

34. Finally, we ask commenters to consider the treatment of dispatch offered by common carriers other than land mobile service providers, *e.g.* aviation, marine, and mobile satellite licensees who provide common carrier service. In this regard, we note that these categories of common carriers were not previously prohibited from offering dispatch service under old Section 332 of the Communications Act, which applied only to land mobile services.[84] Because Section 332 as amended applies to all mobile services, however, an issue arises whether these categories of licensees now fall within the scope of the prohibition absent further Commission action. We believe that Congress did not intend to extend the dispatch ban to other than land mobile licensees (such as satellite licensees) when it amended Section 332 in 1993. Indeed, we believe Congress meant simply to repeat and incorporate its old prohibition against common carrier land mobile service providers offering dispatch without modification and to give the Commission authority to repeal the prohibition in whole or in part. We seek comment on this view.

## IV. Procedural Matters

35. Initial Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.* (1981), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of the rule changes proposed in this *Notice* on small entities. The IRFA is contained in Appendix B to this *Notice*. The Secretary shall cause a copy of this *Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

36. Ex Parte Rules/ Non-Restricted Proceeding. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the

---

[84] Since the prior version of Section 332 applied only to private *land* mobile services, the ban on dispatch did not apply to satellite mobile service providers that were common carriers. *See* 47 U.S.C. § 332 (1982) *amended by* 47 U.S.C. § 332 (1993). At least one commenter in Gen. Docket No. 93-252 has raised a concern about amended Section 332, which now applies to *all* mobile service providers, precluding satellite mobile service providers from offering dispatch service. *See, e.g.,* Comments of AMSC Subsidiary Corporation, GN Docket No. 93-252 (filed Nov. 8, 1993) at 6-7. We determined that the *CMRS Second Report and Order* would not alter AMSC's current authorization to provide service. *CMRS Second Report and Order*, 9 FCC Rcd 1411 at para. 105. *See also* Petition of Waterway Communications System, Inc. for clarification and/or Partial Reconsideration, GN Docket No. 93-252 (May 19, 1994).

comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.120 (a).

37. Comment Period. Interested persons may file comments in this proceeding on or before September 21, 1994, and reply comments on or before October 6, 1994. For filing requirements, *see generally* 47 C.F.R. §§ 1.415, 1.419. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting materials. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, commenters are requested to submit courtesy copies to the Chief, Land Mobile and Microwave Division, Private Radio Bureau, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at the Commission's headquarters at 1919 M Street, N.W., Washington, D.C.

38. For further information regarding this *Notice*, contact Kathleen O'Brien Ham or Sue McNeil at (202) 634-2443 (Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau), or Myron Peck at (202) 418-1310 (Mobile Services Division, Common Carrier Bureau).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

## Appendix A

## Proposed Rule Changes

Parts 22 and 90 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

**Part 22 -- Public Mobile Service**

1. The authority citation for Part 22 continues to read as follows:

**Authority: Sections 4, 303, 307, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 and 332, unless otherwise noted.**

2. Section 22.519 is amended by revising paragraph (a) to read as follows:

**§ 22.519 -- Dispatch Stations**

(a) Dispatch communications are permitted on public land mobile frequencies.

*****

3. Section 22.911 is amended by revising paragraph (d) to read as follows:

**§ 22.911 Permissible Communications.**

*****

(d) General and dispatch communications are permitted on cellular frequencies.

*****

**Part 90 -- Private Land Mobile Radio Services**

4. The authority citation for Part 90 continues to read as follows:

**Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.**

5. 47 C.F.R. § 90.603 is amended by deleting paragraph (c).

*****

6. 47 C.F.R. § 90.703 is amended by deleting paragraph (c).

## Appendix B

### Initial Regulatory Flexibility Analysis

Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of the proposed rule changes on small entities. Written public comments are requested on the IRFA.

I. Reason for Action. This rule making proceeding was initiated to solicit comment on proposals to amend Sections 90.603(c), 90.703, 22.519(a) and 22.911(d) of the Commission's rules. The basic proposals are (1) repeal the ban on wireline telephone carrier eligibility for Specialized Mobile Radio Service (SMR) and commercial 220-222 MHz (commercial 220 MHz) land mobile service and (2) permit all commercial mobile service providers to offer dispatch service in competition with SMR systems.

II. Objectives. In making the above proposals, the Commission intends to promote competition, growth and innovation at a time when the mobile services marketplace is undergoing regulatory changes.

III. Legal Basis. The proposed action is authorized under Sections 3(n), 4(i), 303(r), 332(c) and 332(d) of the Communications Act of 1934, 47 U.S.C. §§ 153(n), 154(i) and 303(r), 332(c) and 332(d), as amended.

IV. Reporting, Recordkeeping and Other Compliance Requirements. None.

V. Federal Rules Which Overlap, Duplicate or Conflict With Rules. None.

VI. Description, Potential Impact, and Number of Small Entities Involved. Many small entities could be affected by the proposals contained in the *Notice*. The full extent of the impact cannot be predicted until the issues presented in this proceeding are resolved. The Commission will evaluate comments in response to the *Notice* and will set forth its findings on the impact of the rule changes on small entities in the Final Regulatory Flexibility Analysis.

VII. Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives. The *Notice* solicits comments on the alternative described above. Any additional significant alternatives presented in the comments will also be considered.